

Office of the Secretary of Defense

§ 159a.24

(c) of this section, such as an unsolicited contract bid, in which private information is submitted to a DoD element for a determination of classification.

§ 159a.21 Regrading.

(a) *Raising to a Higher Level of Classification.* The upgrading of classified information to a higher level than previously determined by officials with appropriate classification authority and jurisdiction over the subject matter is permitted only when all known holders of the information:

(1) Can be notified promptly of such action, and

(2) Are authorized access to the higher level of classification, or the information can be retrieved from those not authorized access to information at the contemplated higher level of classification.

(b) *Classification of Information Previously Determined to be Unclassified.* Unclassified information, once communicated as such, may be classified only when the classifying authority:

(1) Makes the determination required for upgrading in paragraph (a) of this section;

(2) Determines that control of the information has not been lost by such communication and can still be prevented from being lost; and

(3) In the case of information released to secondary distribution centers, such as the DTIC, determines that no secondary distribution has been made and can still be prevented (see also § 159a.15(e) (6) and (7)).

(c) *Notification.* All known holders of information that has been upgraded shall be notified promptly of the upgrading action.

(d) *Downgrading.* When it will serve a useful purpose, original classification authorities may, at the time of original classification, specify that downgrading of the assigned classification will occur on a specified date or upon the occurrence of a stated event.

§ 159a.22 Industrial operations.

(a) *Classification in Industrial Operations.* Classification of information in private industrial operations shall be based only on guidance furnished by the government. Industrial manage-

ment may not make original classification determinations and shall implement the classification decisions of the U.S. Government contracting authority.

(b) *Contract Security Classification Specification.* DD Form 254, "Contract Security Classification Specification," shall be used to convey contractual security classification guidance to industrial management. DD Forms 254 shall be changed by the originator to reflect changes in classification guidance and reviewed for currency and accuracy not less than once every 2 years. Changes shall conform with this part and DoD 5220.22-R and DoD 5220.22-M and shall be provided to all holders of the DD Form 254 as soon as possible. When no changes are made as a result of the biennial review, the originator shall so notify all holders of the DD Form 254 in writing.

Subpart D—Declassification and Downgrading

§ 159a.24 General provisions.

(a) *Policy.* Information classified under E.O. 12356 and prior orders shall be declassified or downgraded as soon as national security considerations permit. Decisions concerning declassification shall be based on the loss of sensitivity of the information with the passage of time or on the occurrence of an event that permits declassification. Information that continues to meet the classification requirements of § 159a.15(c) despite the passage of time will continue to be protected in accordance with this part.

(b) *Responsibility of Officials.* Officials authorized under § 159a.12(c) to declassify or downgrade information that is under the final classification jurisdiction of the Department of Defense shall take such action in accordance with this subpart.

(c) *Declassification Coordination.* DoD Component declassification review of classified information shall be coordinated with any other DoD or non-DoD office, Component, or agency that has a direct interest in the subject matter.

(d) *Declassification by the Director of the ISOO.* If the Director of the ISOO

determines that information is classified in violation of E.O. 12356, the Director may require the activity that originally classified the information to declassify it. Any such decision by the Director may be appealed through the Director of Security Plans and Programs, ODUSD(P), to the National Security Council (NSC). The information shall remain classified pending a prompt decision on the appeal.

§ 159a.25 Systematic review.

(a) *Assistance to the Archivist of the United States.* The Secretary of Defense and the Secretaries of the Military Departments shall designate experienced personnel to assist the Archivist of the United States in the systematic review of classified information. Such personnel shall:

(1) Provide guidance and assistance to National Archives and Records Administration (NARA) employees in identifying and separating documents and specific categories of information within documents that are deemed to require continued classification; and

(2) Refer doubtful cases to the DoD Component having classification jurisdiction over the information or material for resolution.

(b) *Systematic Review Guidelines.* The Director of Security Plans and Programs, ODUSD(P), in coordination with DoD Components, shall review, evaluate, and recommend revisions of DoD Directive 5200.30⁹ at least every 5 years.

(c) *Systematic Review Procedures.* (1) Except as noted in this subsection, classified information transferred to the NARA that is permanently valuable will be reviewed systematically for declassification by the Archivist of the United States with the assistance of the DoD personnel designated for that purpose under paragraph (a) of this section as it becomes 30 years old. Information concerning intelligence (including special activities), sources, or methods created after 1945, and information concerning cryptology created after 1945, accessioned into the NARA will be reviewed systematically as it becomes 50 years old. Such information shall be downgraded or declassified

by the Archivist of the United States under E.O. 12356, the directives of the ISOO, and DoD Directive 5200.30.

(2) All DoD classified information that is permanently valuable and in the possession or control of DoD Components, including that held in Federal Records Centers or other storage areas, may be reviewed systematically for declassification by the DoD Component exercising control of such information. Systematic declassification review conducted by DoD Components and personnel designated under paragraph (a) of this section shall proceed as follows:

(i) Information over which the Department of Defense exercises exclusive or final original classification authority and that under DoD Directive 5200.30, the responsible reviewer determines is to be declassified, shall be marked accordingly.

(ii) Information over which the Department of Defense exercises exclusive or final original classification authority that, after review, is determined to warrant continued protection shall remain classified as long as required by national security considerations.

(3) Classified information over which the Department of Defense does not exercise exclusive or final original classification authority encountered during DoD systematic review may not be declassified unless specifically authorized by the agency having classification jurisdiction over it.

(d) *Systematic Review of Classified Cryptologic Information.* Notwithstanding any other provision of this part, systematic review and declassification of classified cryptologic information shall be conducted in accordance with special procedures developed in consultation with affected agencies by the Director, National Security Agency/Chief, Central Security Service, and approved by the Secretary of Defense under E.O. 12356 and DoD Directive 5200.30.

(e) *Systematic Review of Intelligence Information.* Systematic review for declassification of classified information pertaining to intelligence activities (including special activities), or intelligence sources or methods shall be in accordance with special procedures to

⁹See footnote 1 to § 159a.3.